



The APPRAISER

A PUBLICATION OF THE ARKANSAS APPRAISER LICENSING & CERTIFICATION BOARD

Volume 14, Number 2

Spring Issue

April 2006

Opinion Of Value

Arkansas appraisers need to be aware that a law the state legislature passed in 2005 has the potential to put them out of the business of working on federally related transactions.

As the other 49 states and all U.S. territories did, Arkansas responded to the federal Financial Institutions Reform, Recovery, and Enforcement Act of 1989 by creating the Arkansas Appraiser Licensing and Certification Board in 1991 to regulate the appraisal industry. The same law established The Appraisal Subcommittee to oversee the various state regulatory bodies.

Under Arkansas Act 2218 of 2005, the Board will be abolished on June 30, 2007, unless the 2007 General Assembly specifically votes to keep the agency on the basis of criteria listed in the law. Another alternative in the law is to consolidate the Board with other agencies. "Sunsetting" or consolidating agencies is part of the term limited legislature's effort to "streamline" state government.

The executive director of The Appraisal Subcommittee, Ben Henson, has told Jim Martin, director of the Arkansas Board, that Arkansas "would suffer significant ramifications" if the

See *Opinion*, page 3

Gas Leasing Raises New Issues

Soaring natural gas prices and better technology are creating a new energy source that could be a financial boon for the state and some landowners in a band stretching at least 100 miles east from the Oklahoma border through central-north central Arkansas to the Mississippi River delta.

It's called the Fayetteville Shale play, an organic rich unconventional gas formation lying 1,500 to 6,500 feet below ground; it is reached, of course, by drilling wells.

The Fayetteville Shale play also gives headaches to appraisers unfamiliar with valuing mineral rights. Fortunately, registered Arkansas geologist Terrel Shields has come forward with some help for his fellow appraisers, and his advice is presented in an insert with this newsletter.

Two years ago, Seeco, Inc., a subsidiary of Houston based Southwestern Energy Co. (SEC), touched off a gold rush mentality in Conway and about 16 other counties across central Arkansas when it started leasing activities.

SEC recently told the Arkansas *Democrat-Gazette* it has leased about 875,000 acres. Chesapeake Energy Corp. of Oklahoma City has about 1 million acres leased. Of the two, SEC is the more active explorer. Maverick Oil and Gas of Fort Lauderdale, Fla., is active in the eastern section of the play. Otherwise, the hubs of activity are

Conway and Searcy.

The Fayetteville Shale project has brought a one time payment of \$275 to \$300 an acre (and maybe up to \$650!) to some landowners with royalties amounting to at least 1/8th of production.

On its Web site, SEC says that as of last Dec. 12, it had spud about 80 wells and was a partner in two others in seven counties. Of the 82 wells, 53 are producing, 11 were in some stage of completion and awaiting pipeline hook up, and four had been shut in. EC said it would accelerate its activity in 2006, spending some \$392 million in the shale area this year by drilling 175 to 200 wells.

Average spacing between wells is regulated by Arkansas Oil and Gas Commission and typically runs about 80 acres per well.

The counties in the Fayetteville Shale play have seen little to no drilling in the last 80 years and, unlike those in other Arkansas areas, the mineral rights usually are held by the landowners. This means landowners and appraisers are unfamiliar with the mineral rights question, Terrel Shields says. These issues are especially volatile when, as here, an area is in its exploratory/ development phase.

For example, land that sold in 2004 for \$1,500 an acre now is being priced up to \$4,000 an acre. However, banks often are unwilling

See *Gas*, Page 2

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F.Y.I.

The 15 hour USPAP course may no longer be taken to satisfy the 7 hour national USPAP Update continuing education course requirement.

As of last Jan. 1, students may take only the 7 hour USPAP Update course to comply with Section X(E) of the Rules and Regulations on Page 27.

The 15 hour USPAP course may be taken for the purpose of continuing education credit.

Gas, from Page 1

to lend at the new higher prices because agricultural income will not support the valuation.

Shields says Mickey Lee, an appraiser in Woodruff County, has reported that land sales in his central east Arkansas have stopped. Buyers won't purchase without minerals and sellers won't sell without reserving the mineral rights or

EDI? It Can Be Done Right!

By **Mary Lou Brainerd**
Board Investigator

Last year ended with a total of 60 complaints being filed with the Board. We are on track to match this with the same number of complaints being submitted in the first quarter of this year as in the first three months of 2005.

In the first quarter of 2006, 21 cases were concluded at either Probably Cause Panels or Non-Judicial hearings. Of these, 6 cases were dismissed; 5 were dismissed with "Letters of Advice" being issued; 4 were dismissed with "Letters of Caution," and 6 ended with Consent Agreements.

A recurring problem has been the lack of stamp or seal along with the appraiser's signature on the Certification. The most common excuse has been that the appraisal was sent EDI (electronically). However, if you can scan your signature, you also can scan your seal or stamp to be sent electronically.

Most of the reports I've seen have been sent electronically, and most have the seal. IT CAN BE DONE, and it is the law. See Page 10 of the Statutes and Page 8 of the Rules and Regulations, *Real Estate Appraiser Licensing and Certification In Arkansas* February 2005 edition (most commonly referred to as the "Rules and Regs")

I have received phone calls re-

obtaining a large premium on the land price.

This affects value, complicating the appraiser's job. A secondary effect of drilling is that if production is established, some landowners may have a wealth effect and buy more land that may drive land prices, too. There are value considerations. Shields discusses them in the insert.

STATUS REPORT

As of March 31, 2006, Board records showed these totals for appraisers:

State Certified General	... 424
State Certified Residential	352
State Licensed 144
State Registered 357

(Includes temporary and nonresident appraisers)

NEXT LICENSING, CERTIFICATION EXAM

October 7, 2006

**DEADLINE TO APPLY:
August 5, 2006**

Potential applicants should contact the Board's staff for current information about the application process, exam schedules, fees, and other licensing matters. Call (501) 296-1843; use our website at www.state.ar.us/alcb/, or write to the Appraiser Licensing and Certification Board, 101 E. Capitol Ave., Suite 430, Little Rock, AR 72201

cently from appraisers who had been given signed copies sale of contracts by the lender, only to find that these were bogus and the actual sales agreement was for thousands of dollars less. The only way they discovered this was by confirming the sales amount with the buyer and/or seller. The deed stamps were going to reflect the higher sales amount.

This is going to cause you to have to do more verifying than ever before if you are going to keep this state from being on the FBI's "hot spot" list. It also will keep you from being unduly influenced in your opinion of value and from using comparable sales with inflated information. If you come across this problem in your area, please let us know.

Special Insert

Guidance on Appraising Mineral Rights

By Terrel Shields

Certified General Appraiser CGO690

Registered Professional Geologist AR #25

(Editor's Note: *For reasons described in the Page 1 article in this newsletter about the Fayetteville Shale Play, mineral rights has become a new issue for many Arkansas appraisers and landowners. Terrel Shields has come to the rescue, and here are some of the tips he has supplied for coping with this issue.*)

Mineral rights are excluded from the valuation in many appraisal reports. However, Standard Rule 1-2 requires the appraiser to identify the characteristics of the property that are relevant to the type and definition of value and intended use of the report, including the real property interest to be valued.

Excluding the mineral rights is not an extraordinary assumption or hypothetical condition, but must be addressed in SR 1-2(e)(ii,iii). Like undivided interests or partial interests, the appraisal can value only a portion of the property estate so long as the client so wishes and the appraiser otherwise is competent to do so. Again, Advisory Opinion AO-23 explains that the best data are comparables that also are similarly limited. Otherwise, the appraiser will have to make adjustments.

The first issue an appraiser needs to address is the definition of Mineral Rights. Minerals extracted from the ground such as oil and gas usually are treated as personal property, but the right to exploit the mineral is a real interest. It is not an easement, and it is not an intangible (before 2001, USPAP lumped mineral rights with trademarks, patents and other “intangibles”), The courts long have held that mineral rights are real property rights.

Mineral rights have all the attributes of the bundle of rights. You may sell, lease, use, give away, ingress/egress, or refuse to do any of these, just as you can with surface rights. But mineral rights are the *dominant* estate. In Arkansas, compensation for the land necessary to sit a drilling rig, or well head, is not a given. See the Further Reading at the end of this text

for link to the Oil and Gas Commission. A leasing manual can be downloaded from the agency's site. A surface owner cannot keep a mineral owner from entering the surface to drill for gas.

This fact alone should give rural appraisers pause. A lot of people sold their mineral rights or bought property without mineral rights under the assumption that no drill rig would show up. Suddenly a lot of rigs have. A poorly sited well can impact the visual and environmental value of a surface property or interfere with agriculture. Such impacts need to be addressed by the appraiser even if he/she is excluding the mineral rights from the valuation.

Mineral rights and gas properties long have been appraised by specialists, such as petroleum engineers and geologists. Most are not USPAP compliance reports but are based on private society recommendations from the Society of Petroleum Engineers or the Society of Petroleum Evaluation Engineers (SPEE). In traditional basins, most properties sells without minerals, and the value of minerals in many areas were considered so low as to have little impact on the property total value. Higher oil and gas prices have changed this.

The certified appraiser needs to be aware that when mineral rights are not included in a valuation, he/she no longer is appraising “fee simple”. The correct term for appraising only surface rights is “fee in surface”. You don't find that check-off box on the URAR. You may need to explain the use of such a term.

Appraisers valuing the fee simple also have to avoid assemblage, which is the practice of valuing the whole solely by adding together the individual values of the mineral and surface estates. See Std. 1-4(e). Adding the land value to that of a mineral sale can be misleading when valuing the whole. Farm Services Agency has a report form for mineral rights as part of its farm appraisal package, but it is inadequate and perhaps misleading.

Perhaps worst of all is that lease prices bear little

relationship to the actual value of the oil and gas in the subsurface. Only drilling will prove up production, and if a well is a dry hole, the value of the lease may go essentially to zero, at least for awhile. The value increase in the fee simple relates to the Principle of Anticipation. The holder of the mineral estate is anticipating high rewards. This implies high risk, regardless of whether the mineral owner recognizes the risk.

Highest and Best Use

The highest and best use of undeveloped wildcat mineral rights as of the date of an appraisal is as undeveloped mineral rights. Goat pasture, if you will. If the property is leased each five years, it produces an income. Drilling a well could condemn the property and no one would want to lease. There is a risk to drilling a well. Only in the case in which production has been established in close proximity would the highest and best use be to develop the property. If a well already exists, the highest and best use of the mineral right is to produce the gas and/or oil.

Marketing Value/Marketing Time Impacts

Appraisers are required to define Market Value as part of the appraisal process. The definition most often used is the one in FIRREA that includes this caveat:

2. Both parties are well informed or well advised and acting in what they consider their own interests

It does not say that both parties can be equally ignorant! The current state of affairs in central Arkansas borders on mania, gold fever, or hysteria. Offers as high as \$2,200 per mineral acre have been rejected. This amount exceeds what a typical experienced investor would pay for wildcat acreage. Landowners have few persons to turn to for advice except those who are trying to exploit the resource. Landowners are dependent on the honesty of individuals who have a potential conflict of interest.

The problem of appraising land with mineral rights in a “hot” area is compounded by the dual nature of the estates. Agricultural land may have a slow market because of low product prices or drought. Marketing times might approach one year or more. The severed mineral rights, on the other hand, may be salable

within days or weeks. And if a dry hole is drilled nearby, the mineral rights value could plunge to near zero overnight. The intact fee simple sale likely will be somewhere in between the marketing times of the separated estates. The buyer of the intact estate almost always will be local market participant. There may be buyer resistance to land sold without mineral rights. Mineral rights buyers do not wish to manage or pay for surface rights, and those buyers purchase properties nationwide in an investor market.

Likewise, appraisers should be aware that the oil companies are concentrating initial development within 2-3 miles of gas pipelines for ready access to markets. Be warned. Some pipelines in Woodruff County and elsewhere carry ammonia, not natural gas. Leases distant from a gas pipeline are unlikely to be leased at all but the cheapest rates. Thus, the contribution of the mineral rights value to the fee simple estate will be lessened the farther away the pipeline is.

The appraiser’s best protection is to learn all he/she can about the lease process and to accumulate all data possible on leases. Unlike deed stamps and MLS data, mineral leases do not record the amount of bonus, and there is no broker database to which to refer. Appraisers should collect mineral sales and land sales with and without mineral rights and share their information with their peers. Deeding away mineral rights often is not done with a separate deed, but rather as a reservation on the deed. The appraiser may have to see the deed and/or title opinion to draw a conclusion about the ownership of the mineral rights.

The best course for many appraisers may be to appraise only the fee in surface and to exclude mineral rights values. However, bankers already are being asked to lend money on the total value of the property. Rice growers in particular appear to be in economic distress because of drought conditions and low commodity prices. They are seeking valuations that include the mineral rights to increase their debt ceilings.

Lack of sales will be chronically problematic for the appraiser. Distant sales may not be meaningful if geological reasons are present that affect the mineral value. This is specialized knowledge. And, values may collapse if gas prices fall below \$4 per MCF,

which is the consensus on the break-even price to sustain profitable drilling.

Paired sales of land with mineral rights and land without serve as the appraiser's best evidence of contributory value to the fee simple. All land sales should be researched to find out if minerals are conveyed or not. Polling buyers and sellers also is a must and an appropriate way to determine adjustments. Ask the buyer, seller, or someone knowledgeable about the transaction what they felt the minerals contributed to the value. Bankers are some of the best sources for making this estimate. The polling should be thorough, on at least a county-by-county basis. A reminder is that most of the buyers and sellers are not well informed, although they may be equally informed or equally ill advised.

Leases are a form of income property. A standard 5 year lease with 1/8th royalty provides the owner with income beginning Year 0. That income stream is held during the primary term for \$1 an acre after the initial payment and expires at the end of the 5 years if a productive well has not been drilled. Once production is established, the lease remains in effect until the well stops producing. The income, whether from production or simply from leasing, can be capitalized into a value.

Appraising the Producing Mineral Interest

Production and severed mineral rights are appraised predominantly by experts in the valuation of petroleum property. The dominant approach to appraising involves income methods. Sales data suffer from lack of transaction information as most large sales are closely held trade secrets. The Cost Approach is never applicable except for downstream properties, e.g., pipelines, refineries. Well head equipment, pump jacks, etc., are part of the trade fixtures necessary for production to exist and are not included in the valuation. Assessors may appraise the equipment that is assessed to the operator of the well.

Some techniques that appear to be rule-of-thumb to an appraiser are used so commonly in the industry as to reflect the market. Engineers and geologists who calculate reserves and do discounted cash flows thereof are described most accurately as "Estimators" It is then the job of the appraiser to apply that final

market discount rate to the cash flow to achieve a market appraisal. Using an expert in the area of mineral rights is a way to achieve competency. But the appraiser who attempts this may suffer the same fate that plagues the uninitiated who hire timber cruisers to help with the appraisal of timberland: the cruiser must be experienced in valuation of timberland and understand how to convey his knowledge to you in a meaningful way.

Likewise, the mineral Estimator should be able to assist the appraiser in making sense of the income stream and to properly capitalize it into a meaningful value indication. Gas wells decline with time. Production may drop 50 percent in the first year although the total life of the well may exceed 15 years. The valuation of small parcels is particularly difficult because the cost of an appraisal may approach or exceed the market value. Estate valuation with minerals may be required by the court or taxing authority regardless of their value.

Conclusion

Events in central and east Arkansas are fast changing, and the appraiser who must deal with the mineral rights will have to be nimble to remain on top of the situation. Even residential appraisers valuing property with small acreages may encounter the mineral issue. The smallest tract reporting an offer in Conway County was 1.82 acres, and the offer was more than \$1,000! If gas is found under city lots, the problem remains the same: what effect will it have on value?

The situation with the Fayetteville Shale Play has complicated the appraiser's life, but including the mineral rights in a fee simple appraisal is well within the scope of most appraiser's capability with a little self-education and common sense. In many respects it is no different from dealing with conservation easements, hunting leases, and other complex property attributes.

Good client communication is a must, and the appraiser needs to relay clearly to the banker or client that the mineral component of the valuation is volatile and marketing times short. Unlike the underlying value of the land that has a different paradigm of value, market conditions for mineral rights are chaotic.

Finally, appraisers wishing to expand their services in those areas with active ongoing leasing can hire out to petroleum landmen or companies to search courthouse records, determine the mineral ownership, and perhaps contact owners about leasing their land. Good petroleum landmen typically are paid \$300-500 a day depending on experience. Alternatively, there is a need for simple transaction data. Every appraiser

who deals with rural property in affected areas will need as much data as possible. Someone skilled in courthouse records easily could create a monthly list of leases and mineral sales to sell to the public. Providing transaction data and confirming that data with the seller or buyer would be a valuable service to other appraisers, landmen, and the general public.

Further Reading

Arkansas Geological Commission
<http://www.state.ar.us/agc/FayShGasPlay.htm>

Arkansas Oil & Gas Commission
<http://www.aoge.state.ar.us/>

Petroleum Landman
<http://www.landman.org/>

Society of Petroleum Evaluation Engineers
<http://www.spee.org/>

Gustavson Associates
<http://www.Gustafson.com/>

Lease and Petroleum Terms —

- ◆ **Operator** - The mineral lessor who manages the drilling and producing of a well. They may own 100 percent or a much smaller interest in the drilling unit.
- ◆ **Drilling Unit** - The state sets an optimum spacing for wells. The unit consists of all the acreage within that spacing unit. An unwilling lessee can be a force-pulled@ into joining the unit.
- ◆ **Royalty Interest** - A passive interest in a well, usually the landowner's share. Arkansas requires the landowner's share be at least 1/8th.
- ◆ **Working Interest** - The active interest in the well that pays for the drilling and producing of the oil or gas.
- ◆ **HBP** - Held By Production. If a lease produces, the lease is extended automatically for the life of the well.
- ◆ **"Fracing"** - A process of pumping a fluid at high pressure down a hole into the productive interval to fracture the rocks. The frac fluid contains a proppant, usually sand, which helps hold the fractures open. This increases gas production after the pressure is relieved and the fluid is back-flowed. All Fayetteville Shale wells are "fraced"
- ◆ **Electric Logs** - Wireline tools are run into a well to record induced electrical resistivity, gamma radiation, acoustic signals, nuclear and density tools. These logs are interpreted by engineers and geologists to determine the relative productivity of a well.

ASB Tells Workfile Purposes

The Appraisal Standards Board recently was asked about the purpose of an appraiser's work file.

The Board replied that the workfile preserves evidence of the appraiser's compliance with USPAP and other information that may be needed to support the appraiser's opinions, conclusions, and, in the case of an appraisal consulting assignment, recommendation.

Other purposes are served as well, the Board said. As with many other professions, discipline by public agencies and peer review, together with one's self discipline and dedication of effort, serves to ensure performance of assignment in compliance with professional standards. In addition to aiding enforcement, workfiles help the appraiser handle questions from a client or an intended user after the delivery of the report.

The Board also was asked to explain what supplemental standards are. These, the Board responded, are requirements that are issued by a government agency, a government sponsored enterprise or another entity that establish public policy that have a material effect on development and reporting and that apply to all properties or assignments in a particular category.

Contractual agreements that are unique to the contracting entity and that apply specifically to a particular property or assignment are not supplemental standards.

5 Reappointed

Unlike in the past, there will be no major turnover on the Arkansas Appraiser Licensing and Certification Board this year because Gov. Mike Huckabee has reappointed all five members whose terms expired. Each is to serve until Jan. 15, 2009.

The five are **Bruce Chiles** of Joiner (Mississippi County); **Michael Clayton** of Camden; **Charles Coats** of Conway; **Fred Rausch** of Fort Smith; and **Richard Stephens** of Little Rock.

Opinion, from Page 1

agency is abolished.

Henson said his group would have no option but to find Arkansas out of compliance with federal law. This, he explained, would mean Arkansas appraisers could not work on federally related transactions, which would "severely disrupt" the real estate market and jeopardize the livelihoods of at least 800 appraisers, he said.

As to consolidation, Henson said the Subcommittee imposes no particular organization on the states but does insist there be no conflicts of interest or appearance of conflicts. Ideally, he said, states should have independent agencies. If not, the agency should never be combined with any other having to do with realty.

A legislative subcommittee was formed to review the state's regulatory agencies with the goal of recommending whether they be abolished, consolidated, or continued as is.

The members of this group appraisers may wish to contact to voice their concerns are: Co-Chairs Sen. Steve Faris, D-Malvern, and Rep. Jeff Wood, D-Sherwood; Sens. Ed Wilkinson, D-Greenwood; Jim Argue, D-Little Rock; Gilbert Baker, R-Conway; Shane Broadway, D-Bryant; Jack Critcher, D-Batesville; Hank Wilkins IV, D-Pine Bluff; Reps. Betty Pickett, D-Conway; Allen Maxwell, D-Monticello; Horace Hardwick, R-Bentonville; Linda Chesterfield, D-Little Rock; Denny Sumpter, D-West Memphis; and Rick Saunders, D-Hot Springs.

EDUCATION OFFERINGS

AR Chapter of The Appraisal Institute - 7 hour USPAP Update, May 25, Little Rock. Call Sara Stephens at (501) 372-7513 for more information.

Baker's Professional Real Estate College - Shreveport, La. Call Billie Baker at 1-318-222-7459.

Career Webschool - Distance learning (online). Call 770-919-9191.

The Columbia Institute - Four courses, including USPAP Update, June 13-16, Rogers area. see www.columbiainstitute.org, or call 1-800-460-3147 for more information.

Lifetime Learning - All classes in Springfield, Mo. Call Dennis McElroy at (417) 887-2221.

The Lincoln Graduate Center - Call 1-800-531-5333 for information.

McKissock Appraisal School - Four continuing education seminars, including the 7 hour USPAP Update; May 5-8, Fayetteville; May 19-22, Jonesboro; June 9-12, Little Rock. Call 1-800-328-2008.

Mid-South RE Appraisal Educators - Four courses, including the 7 hour USPAP Update. May 1-4, Fort Smith; May 15-18, Blytheville; May 22-27, Little Rock; June 5-8, Branson, MO. Contact James Reuss at j-reuss@sbcglobal.net.

National Association of Independent Fee Appraisers - Call 1-312-673-5914 for information.

Ozarks Technical Community College - Springfield, Mo. Call Mike Toler at 1-417-477-8880.

RCI Career Enhancements - Land & Site Valuation & Sales Comparison, 15 hrs. QE/CE, May 22-23, Russellville; 7 hour USPAP Update, June 12, Branson, Mo.; Effective Communications in Appraisal Practice, 7 hrs., CE, June 13, Branson, Mo. Call David Reinhold at (479) 968-7752.

John C. Wilkerson Jr. - Pryor Creek, OK. Call 1-918-825-1514 for class schedules.

ARKANSAS



APPRAISER LICENSING & CERTIFICATION BOARD

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Little Rock, Arkansas 72201**

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LICENSE RENEWAL

Due By JUNE 30, 2006

- ◆ Notices that license renewal applications are due in the Appraiser Licensing and Certification Board's office by June 30 will start arriving in the mailboxes of Arkansas appraisers in early May.
- ◆ A license or certification lapses when an appraiser fails to renew on time.
- ◆ To renew a license or certification, an appraiser must document having completed 28 hours of continuing education since June 30, 2004. Also, a 7 hour USPAP Update course must have been completed and documentation filed with the Board on or before renewal is requested.
- ◆ The Board encourages Arkansas appraisers to review their hours and take steps NOW to fill in any gaps.

A Big Class

Forty-three appraisers applied to sit for the April 1 exam — one of the largest classes of candidates since credentialing began in the early 1990s.

Twenty-five were first-time candidates seeking a State License classification; 17 already were in the system seeking to upgrade (to Certified Residential or Certified Residential to Certified General); and 13 were individuals retaking a specific exam.

The next exam will be given in Arkansas on Oct. 7. Applications must be filed by Aug. 7.

In the interim, those who meet the education and experience requirements for a specific level of licensing or certification may apply to the Board and be processed to take the exam at another approved location. Call 501-296-1843 for information.